M.U. and FEDERATION REPORTS.

GAN KEE BENG AND ANOTHER v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Pretheroe, J.) September 3, 1947]
[Malacca — Cr. App. No. 17 of 1947]

Price Control Ordinance, 1946, Ss. 6 and 9 (i) (a) — Chinese "Chop" — Transfer of Powers and Interpretation Ordinance, 1946, Ss. 13 and 14.

It was contended in this case that the licence issued under Section 6 of the Price Control Ordinance, 1946, was in the name of "Chop Lian Chong" and not in the names of the appellants.

Held, that a licence in the name of a Chinese "Chop" is a licence of the partners in the firm for the purpose of S. 6 of the Price Control Ordinance, 1946, and is sufficient to found a charge under S. 9 (i) (a) of the Ordinance.

CRIMINAL APPEAL.

D. S. Marshall for the Appellants.

Kilner (D. P. P.) for the Respondent.

Pretheroe, J. : — The first appellant was charged as the managing director of Chop Lian Chong and the second appellant was charged as a director of the same firm. The charge was that, being persons licensed under section 6 of the Price Control Ordinance, 1946, and having sugar in their possession, they falsely denied such possession. The learned District Court Judge convicted both appellants and fined each of them $350 or three months simple imprisonment in default of payment. He also ordered that the sugar exhibited in the case be forfeited. Each appellant has appealed against both his conviction and sentence.

Mr. Marshall appeared for both appellants and based his arguments on two main grounds viz :—

(a) That in fact the appellants were not licensed under section 6 of the Price Control Ordinance, 1946, and therefore could not contravene section 9 (1) (a) of the same Ordinance; and

(b) That evidence was wrongly admitted at the trial which vitiated the whole proceedings.

The licence issued under section 6 of the Ordinance was in the name of "Chop Lian Chong" and not in the names of the appellants. Mr. Marshall argued that, as section 14 of the Transfer of Powers and Interpretation Ordinance, 1946, did not apply Part I of the Interpretation Ordinance of the Straits Settlements to the interpretation of the Malayan Union Ordinances, the expression "person" was not defined in our Laws and therefore did not include a corporation or firm. This submission was however based on an error for the definition of, *inter alia,* the expression "person" in Part I of the Interpretation Ordinance of the Straits Settlements is specifically applied to the interpretation of the Malayan Union Ordinances by the last paragraph of section 13 of the Transfer of Powers and Interpretation Ordinance, 1946. By virtue of that definition the expression person "includes any body of persons corporate or unincorporate" so that the first ground of appeal fails.

The second ground of appeal was that the second witness for the prosecution gave evidence relating to a refusal by the appellants to sell him sugar earlier on the same day which was not the subject matter of the charge. Such evidence was admitted by the learned Judge and it showed that that witness, after having unsuccessfully demanded sugar from the appellants, left their shop and within 20 yards met some Price Control Inspectors and immediately reported the fact to them. As a result of this report the Inspectors immediately entered appellants' shop and demanded sugar. This evidence was admissible under secions 7, 9 and 11 (2) of the Evidence Ordinance. I decide therefore that the appeals against the convictions fail.

At the time the appellants denied they had any sugar there were five bags of light brown sugar within their shop premises. It is clear therefore that the offence was deliberate and calculated. The Ordinance itself indicates clearly the view of the Legislature regarding the gravity of any evasion of its provisions by prescribing a maximum penalty for a first offence of a fine of $10,000 and two years imprisonment. In my opinion the penalty imposed by the learned District Judge was certainly neither harsh nor unconscionable and it is certainly not disproportionate to the penalties imposed in other Courts in comparable circumstances. Both appeals therefore fail on all grounds and are dismissed.

Appeal Dismissed.

LIM CHEE LAN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J.) October 24, 1947]
[Kuala Lumpur Dt. Ct. Cr. App. No. 54 of 1947]

Criminal Procedure Code, Ss. 2, 166 and 276 — Penal Code, Ss. 40, 72, 116 and 161 — Alternative charge under the Penal Code and under other Enactments — F.M.S. Prevention of Corruption Enactment, 1938, S. 3 (b) — Police officer investigating one offence sees another committed — Statement made in respect of second offence is a "police report" not a statement during course of investigation.

In this case two Detective Police Constables were sent out to investigate whether they could obtain any information regarding the carrying on of "Chee fah" lotteries. In the course of investigation they were bribed by the appellant.

The appellant was charged with an offence under Ss. 116 and 161 of the Penal Code and on an alternative charge under S. 3 (b) of F.M.S. Prevention of Corruption Enactment, 1938. He was convicted on the alternative charge and sentenced to 15 months rigorous imprisonment. He appealed on several grounds, but the only grounds which were really relied on were the following:—

(1) That the joinder of a charge under the Penal Code with an alternative charge under a special law is bad in law.

(2) That the District Judge admitted in evidence statements of two Detective Police Constables as Police Reports, when in fact such statements were statements made in the course of police investigation.

Held, (i) that a charge under the Penal Code can, in appropriate circumstances, lawfully be laid alternatively with a charge under another law. Alternative charges are not limited to cases where there could be a conviction in the alternative. (ii) Where in investigating one offence a police officer sees another offence committed his written statement as to that second offence is a "police report" not a "statement made in the course of a police investigation", and is therefore admissible in evidence, even though he suspected that such second offence might be committed in course of his investigation of the first offence.

Cases referred to :—

(1) *Ganesh Krishna v. Emperor,* 10 Indian Cases 168.

(2) *Manhari v. Emperor,* I.L.R. 45 Cal 727.

(3) *Tulsi Telini v. Emperor,* I.L.R. 50 Cal. 564.

(4) *Maksuddan v. Emperor,* I.L.R. 2 P.L.T. 31.

(5) *Supramanian v. Public Prosecutor,* (1938) F.M.S.L.R. 153; (1939) M.L.J. 229.

CRIMINAL APPEAL.

R. Ramani for the Appellant.

Sheilds for the Respondent.

Willan, C. J. : — In this case the appellant was charged before the District Judge at Kuala Lumpur with an offence against sections 116 and 161 of the Penal Code, and on an alternative charge under section 3 (b) of the Federated Malay States Prevention of Corruption Enactment, 1938. He was convicted on the alternative charge and sentenced to 15 months rigorous imprisonment.

He appealed against his conviction and sentence on several grounds, but the only grounds which were really relied on at the hearing of the appeal were the following :—

(1) That the joinder of a charge under the Penal Code with an alternative charge under a special law is bad in law.

(2) That the District Judge admitted in evidence statements of two Detective Police Constables as Police Reports, when in fact such statements were statements made in the course of a police investigation.

(3) That the sentence of 15 months rigorous imprisonment was excessive.

The facts of the case are that the Officer in Charge of the Criminal Investigation Department gave instructions to the two Detective Police Constables to go to a certain place in Kuala Lumpur, with a view to obtaining information regarding *Chee fah* lotteries. When he gave his instructions he warned the two Detective Police Constables that if they were offered any bribe they were to accept the bribe and return to the Detective Office and make a report.

Acting on those instructions the two Detective Police Constables proceeded to the place indicated, and their evidence was that they were offered, and accepted according to their instructions, a bribe of thirty dollars from the appellant in order that they should not make any report regarding the activities of the organisation running *Chee fah* lotteries.

They at once returned to the Detective Office and each of them made the statements referred to above which were recorded as police reports.

With regard to the first ground of appeal mentioned above: By section 166 of the Criminal Procedure Code charges in the alternative are permissible where it is doubtful what offence has been committed. By section 2 of that Code "offence" includes an offence not only under the Penal Code but also under other Enactments. Therefore *prima facie* section 166 applies to an alternative charge under the Penal Code and under other Enactments. But Mr. Ramani for the appellant submitted that since section 72 of the Penal Code is by section 40 of that Code limited to offences under the Penal Code, and since section 276 of the Criminal Procedure Code, which relates to the Court passing judgment in the alternative, is limited to offences under the Penal Code, therefore the inference is that charges framed in the alternative under section 166 of the Criminal Procedure Code are restricted to offences under the Penal Code.

I am unable to agree with that submission because in this case section 276 of the Criminal Procedure Code has no application since the District Judge did not pass judgment in the alternative; he decided that the appellant was guilty of an offence against section 3 (b) of the Prevention of Corruption Enactment, 1938.

Mr. Ramani relied on the case of *Ganesh Krishna v. Emperor*[1], which is a decision of the Sind Judicial Commissioner's Court in 1911. But, so far as I have been able to discover that is an isolated case — (Mr. Ramani himself informed me that he had not been able to discover any other case to support his first ground of appeal) and the decision in that case was not followed in at least three other Indian cases, namely, *Manhari v. Emperor*[2], *Tulsi Telini v. Emperor*[3] and *Maksuddan v. Emperor*[4].

Nor was a similar submission — i.e. that persons cannot be charged in the alternative with offences under the Penal Code and with offences under other Enactments — viewed with favour by the learned Judge in the case of *Supramanian v. Public Prosecutor*[5].

Accordingly the first ground of appeal fails.

As regards the second ground of appeal, Mr. Ramani submitted that since the two Detective Police Constables were investigating whether *Chee fah* lotteries were being carried on, and the warning relating to the possibility of being bribed had been given to them by their superior Police Officer at the same time as he gave them instructions to conduct the police investigation, therefore the statements made by them with regard to the act of the appellant in bribing them were made in the course of that police investigation.

I am unable to agree with that submission. The two Detective Police Constables were sent out to investigate whether they could obtain any information regarding the carrying on of *Chee fah* lotteries. If they had discovered any information concerning such lotteries, then any statement regarding the information so discovered would have been a statement in a police investigation. But in the course of that investigation an entirely different set of circumstances arose, i.e. they were bribed by the appellant. Thereupon a fresh offence had been committed and they both made police reports concerning it. Because their superior Police Officer had been sufficiently prudent to anticipate that there might be an attempt to bribe them, and had given them instructions how to act in that event, it cannot be said that those reports were statements made in the course of a police investigation into the existence of a *Chee fah* lottery. To hold otherwise would be to exclude a police report relating to murder, if for instance the appellant, instead of bribing the Detective Police Constables, had stabbed one of them fatally.

Accordingly the second ground of appeal must fail.

As to sentence, the maximum imprisonment for an offence under section 3 (b) of the Prevention of Corruption Enactment, 1938, is two years. The appellant, who is a first offender, was sentenced to 15 months rigorous imprisonment. I regard this as excessive, and reduce it to 9 months rigorous imprisonment. Since the appellant has been on bail, the imprisonment will run from the date of this judgment.

Conviction upheld — Sentence reduced.

ARJAN SINGH v. PUBLIC PROSECUTOR.

[Ct. of Cr. App. (Willan, C.J. Malayan Union, Murray-Aynsley, C.J. Singapore, Pretheroe, J.) Sept. 18, 1947]
[Perak — Cr. Appeal No. 117/47]

Penal Code, S. 385 — Attempted extortion — Writing a letter of threat but not posting — Preparation.

The mere act of writing and detaining a letter is not an attempt to commit extortion but at the most a preparatory step towards the commission of that offence. The gist of the offence of extortion is putting another person in fear of an injury, and similarly to support a conviction for attempted extortion it must be shown that the intending extortioner has done some act with this intention.

COURT OF APPEAL.

Appellant in person.

M. G. N. Neal (Crown Counsel) for the Respondent.

The Judgment of the Court was delivered by :—

Willan, C. J. : — At their trial the appellant and one Gurmukh Singh were jointly charged as follows :—

(1) That you on or about the 16th day of April, 1947, at Ipoh in the State of Perak, in order to the committing of extortion, did put one Ong Thuan Chye in fear of injury to his person, and you have thereby committed an offence punishable under section 385 of the Penal Code.

(2) That you on or about the 24th day of April, 1947, at Ipoh in the State of Perak, in order to the committing of extortion, did attempt to put one Magappan Chettiar in fear of death, and you have thereby committed an offence punishable under section 387 of the Penal Code.

Both accused were found guilty on both charges and the appellant was sentenced to two years rigorous imprisonment and to twelve strokes with a rattan on the first charge, and to two years rigorous imprisonment on the second charge. The two terms of imprisonment were ordered to run concurrently. Appellant appealed against both the convictions and sentences.